

422.285 Person sentenced for capital crime may request DNA testing -- Court orders -- Cost -- Access to reports -- Preservation of evidence -- Dismissal -- Hearing when results favorable to petitioner.

- (1) At any time, a person who was convicted of and sentenced to death for a capital offense and who meets the requirements of this section may request the forensic deoxyribonucleic acid (DNA) testing and analysis of any evidence that is in the possession or control of the court or Commonwealth, that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.
- (2) After notice to the prosecutor and an opportunity to respond, the court shall order DNA testing and analysis if the court finds that all of the following apply:
 - (a) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing and analysis;
 - (b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted; and
 - (c) The evidence was not previously subjected to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and may resolve an issue not previously resolved by the previous testing and analysis.
- (3) After notice to the prosecutor and an opportunity to respond, the court may order DNA testing and analysis if the court finds that all of the following apply:
 - (a) A reasonable probability exists that either:
 1. The petitioner's verdict or sentence would have been more favorable if the results of DNA testing and analysis had been available at the trial leading to the judgment of conviction; or
 2. DNA testing and analysis will produce exculpatory evidence;
 - (b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted; and
 - (c) The evidence was not previously subject to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and that may resolve an issue not previously resolved by the previous testing and analysis.
- (4) If the court orders testing and analysis pursuant to subsection (2) of this section, the court shall order the responsibility for payment, if necessary. If the court orders testing and analysis of this section pursuant to subsection (3) of this section, the court shall require the petitioner to pay the costs of testing and analysis, if required by KRS 17.176. If the court orders testing and analysis under subsection (2) or (3) of this section the court shall appoint counsel to those petitioners who qualify for appointment under KRS Chapter 31.
- (5) If the prosecutor or defense counsel has previously subjected evidence to DNA testing and analysis, the court shall order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing and analysis, including underlying data and

laboratory notes. If the court orders DNA testing and analysis pursuant to this section, the court shall order the production of any laboratory reports that are prepared in connection with the testing and analysis and may order the production of any underlying data and laboratory notes.

- (6) If a petition is filed pursuant to this section, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If the evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt.
- (7) The court may make any other orders that the court deems appropriate, including designating any of the following:
 - (a) The preservation of some of the sample for replicating the testing and analysis; and
 - (b) Elimination samples from third parties.
- (8) If the results of the DNA testing and analysis are not favorable to the petitioner, the court shall dismiss the petition. The court may make further orders as it deems appropriate, including any of the following:
 - (a) Notifying the Department of Corrections and the Parole Board;
 - (b) Requesting that the petitioner's sample be added to the Kentucky State Police database; and
 - (c) Providing notification to the victim or family of the victim.
- (9) In a capital case in which the death penalty has been imposed, notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the DNA testing and analysis are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to this section or the Kentucky Rules of Criminal Procedure.

Effective: July 15, 2002

History: Created 2002 Ky. Acts ch. 154, sec. 1, effective July 15, 2002.

Legislative Research Commission Note (7/15/2002). Under the authority of KRS 7.136, the Reviser of Statutes has corrected a manifest clerical or typographical error in the second sentence of subsection (5) of this section as enacted in 2002 Ky. Acts ch. 154, sec. 1, by inserting "and" after the second appearance of "testing and analysis."